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REPORTS

NOTES OF THE WEEK

Crime and Insanity

During the course of argument in *R.* v. *Dixon* (*The Times,* October 8) the Lord Chief Justice observed that where there was insanity it was important that it should be pleaded.

This observation prompts once again the suggestion that the law in this matter is in need of amendment. It should be possible that at a trial on indictment the question of insanity could be raised by the court, if not also by the prosecution. The prisoner and his advisers may not think it in his interest to plead insanity, but it may nevertheless be in the interest of the public. The two interests may be in conflict, and the interest of the public ought not to be excluded from consideration.

A magistrates' court dealing summarily with an offence punishable with imprisonment may itself raise the question of insanity without waiting for the prisoner to do so. It would be in the public interest if a similar power were given to quarter sessions and Assizes.

Magistrates' Association

Before the Association settles down to transact the serious business of its annual general meeting there is the pleasing social atmosphere of its annual luncheon. This year, the Rt. Hon. the Earl of Feversham, D.S.O., J.P., D.L., in proposing the toast of the Association, congratulated it upon the attainment of 10,000 membership—a memorable sign of progress along the right path.

Lord Merthyr in replying on behalf of the Association, made Lord Feversham's Presidency of the National Association of Probation Officers the opportunity for paying tribute to probation officers. He said that the probation service was a much powerful service for good, and depended to a very great extent on the calibre of the officers themselves, who were born, not made. For the probation service was not so much a profession as a vocation.

Mr. T. A. Hamilton Baynes in proposing the health of the guests—to be responded to by Mr. A. J. Chislett, president of the Justices' Clerks' Society—said how grateful all magistrates were to their learned clerks for keeping them out of trouble. Mr. Chislett said in his reply in a characteristically elegant speech that the strength of the English bench lay in its impartiality, disinterest and independence.

Condonation

Condonation by a husband of a matrimonial offence committed by the wife, of which he has full knowledge, is conclusively presumed if, after such knowledge, he has sexual intercourse with her. The inference is not conclusive, however, where it is the husband who has committed the matrimonial offence if in similar circumstances, she permits him to have intercourse, *Keats* v. *Keats and Montezuma* (1859) 1 Sw. & Tr. 334, 347. The distinction rests upon the fact that for various reasons the wife may not be so free to refuse her husband as to justify a conclusive presumption that she acted willingly. This principle was re-affirmed by the Court of Appeal in *Baguley* v. *Baguley* (*The Times,* October 10). In this instance it was held that the evidence led to the inference that the wife, in allowing her husband to have intercourse with her, was condoning his matrimonial offence. In the course of his judgment, Hodson, L.J., said, "This was not a case in which the wife was not her own mistress, with no option to go away and no place to go to. There had been nothing to force her to submit to the embraces of her husband except her own will; and in such circumstances the authorities had consistently proceeded on the basis that the law of condonation was the same for the husband as for the wife. If this wife had reinstated him by submitting voluntarily to his embraces without any extraneous circumstances weighing against the inference to be drawn, she must be held to have condoned the offence."

A Change in the Law Desirable?

The facts in *Baguley* v. *Baguley* were unusual. The one act of intercourse took place when the parties had met at the house of the husband's parents after they had been reconciled and intended to resume married life together following a period of separation. Unfortunately, difficulties arose later in

the day, and the parties never did resume cohabitation.

The law is clear enough, but in some quarters it is felt to be open to criticism. Some social workers, for example, feel that inasmuch as reconciliation is better than separation or divorce, there should be an opportunity for parties to try living together for a short period, in the hope that permanent reconciliation and cohabitation will result, without the danger that the party who has been wronged will be held by condonation to have lost the right to give evidence of offences in the event of a breakdown in the joint life. Talk about this kind of attitude was referred to by Hodson, L.J., who pointed out that this was not the present law.

It is probable that if the law did permit a sort of probationary period as an experiment of living together, without condonation being conclusively presumed, some people would be glad to try it, and some marriages would be preserved. Any such measure would need careful consideration, but there is certainly something worth discussion here.

Dustbins and Litter

In an account of the way in which Bristol is dealing with the litter problem, the *Manchester Guardian* of October 1 states that a penalty of £5 awaits any person who scatters the contents of a dustbin in a street. We know nothing about the methods of the Bristol dustmen, but in some towns the dustmen themselves are among the worst offenders, carelessly scattering paper and other material and never stopping to pick it up. However, it would appear from the statements in the *Manchester Guardian* that Bristol has become neat and tidy. Moreover, the disposal of paper and waste food has materially relieved the rates.

In the metropolitan police district it is an offence against s. 60 of the Metropolitan Police Act, 1839, for a person in any thoroughfare, to throw or lay any dirt, litter, or ashes, or any carrion, fish, offal, or rubbish.

In the days when London had its many homeless down and outs it was not uncommon to see one of these unfortunates delving into dustbins outside premises awaiting the arrival of the dust cart, in the hope of finding something worth taking, possibly waste food. Some of the contents of the dustbin became scattered over the pavement and a prosecution under s. 60 was sometimes the result. Fortunately, there is no need for anyone to rake over the dustbins in these days.

Frivolous Appeals

In view of the opinion we expressed at p. 635, *ante*, to the effect that there were not many vexatious or frivolous appeals in criminal matters, we were interested to read in *The Scotsman* of October 2, observations made in the Scottish Court of Criminal Appeal on this subject.

In one case the Lord Justice-General, Lord Clyde, described the application as having no merits whatever. He added, "Far too often in recent months have applications of this sort been presented to this Court by convicted persons, with a view no doubt to securing, in the interval before the application is heard, some alleviation of their sentence, and more than once this Court has given a warning that such a course involves an abuse of the appeal procedure under the statute, and will not be tolerated indefinitely."

The Times of October 9 reported proceedings in the English Court of Criminal Appeal, in which 18 applications for leave to appeal were dismissed in 30 seconds. No counsel appeared. The Lord Chief Justice said that the papers had been considered by each Judge forming the Court individually and separately and no Judge had been able to find in any single case any grounds for interfering with either conviction or sentence.

While it does not follow that because an appeal fails it ought not to have been brought, there is some ground for thinking that where so many fail and Judges both in England and in Scotland find them to possess no merits, some at least are merely frivolous.

Radar Speed Checks

It is not easy for magistrates' courts to decide between experts when their evidence differs on such an abstruse subject as radar. The *Manchester Guardian* of October 4 reports at length the hearing of a case in which a motorist was summoned for exceeding the speed limit, the evidence for the prosecution being provided by a reading on the new radar device for recording the speed of vehicles which come within its beam. The motorist was represented by an advocate on behalf of the Royal Automobile Club. Each side called an expert witness and the real point at issue seems to have been the extent to which the reading on the instrument can be affected by extraneous interferences of one kind and another which could make it give a false reading without it being possible for those using the instrument to be aware that such an error was being introduced. It does not seem to be in dispute that, if such interference can be excluded and only one vehicle is within the beam at the material time, the instrument gives a reliable recording of that vehicle's speed, but the defence expert gave evidence that he had seen the instrument record 30 miles per hour when no vehicle was on the road and no one near the instrument and that he thought this must be due to some form of radio signal. Also, he said that by experimenting with an electric bell he found that this caused a definite interference up to about 160 paces away.

The contention of the defence was that it was not for them to show that there *was* interference to affect the reading in a particular case, it was for the prosecution to satisfy the court, beyond reasonable doubt, of the instrument's reliability; and that if the evidence left the court in doubt whether the instrument is liable at any time to have its reading affected by unascertainable interference it would not be safe to convict. In this case the court decided that the case was proved. We wonder whether, sooner or later, the High Court will be called upon to investigate the working of this device and to give courts some guidance in dealing with cases in which it is involved, but it is not clear how a point of law can arise on which a case could be stated.

The Late Mrs. Helena Normanton, Q.C.

We announce with regret the death at the age of 74 of Mrs. Helena Normanton, Q.C., who was the first woman to be called to the English bar.

Mrs. Normanton was born in Kensington in 1883 and took first class honours in modern history at London University before going to the University of Dijon, where she procured a diploma in French language, literature and history.

She was admitted a student of the Middle Temple in December, 1919, and called to the bar in 1922 by the Middle Temple, thereby making legal history.

Of her success as a practising barrister *The Times* says: ". . . But in truth it cannot be said that her practice ever attained a success commensurate with her abilities and her hopes. Such as it was, it was principally at the

Central Criminal Court or at the County of London Sessions with occasional visits to the Divorce Court and the High Court. Her cases were conscientiously prepared and she took much trouble to know her facts but she was apt to turn a comparatively trivial case into a miniature State trial. She was also proud of her literary learning and an Old Bailey jury might often be bewildered or amused by a discourse sprinkled with quotations from the classics or from well known writers . . ."

In the social life of the bar she was an energetic and kindly figure who as Junior of the Old Bailey Mess, reorganized both its catering and finance to the greatest advantage.

Besides enjoying the distinction of being England's first lady barrister, Mrs. Normanton also acquired further laurels. She was the first woman to be *elected* to the General Council of the bar (Miss Harriet Cross had been previously *co-opted*) and one of the first two women to obtain a silk gown in England in 1949. (She was preceded in Scotland by a few months.)

Naturally with such qualifications Mrs. Normanton was an industrious feminist and took a leading part in women's organizations. She was Associate Grand Dame for Europe of the International Society of Women Lawyers and chairman of the international legislative sub-committee of the International Federation of Business and Professional Women. She was also president of the Married Women's Association, but in 1952, after a dispute on policy, she resigned from this position and formed a new organization called the Council of Married Women.

Mrs. Normanton was a prolific writer in the fields where her interests lay. She was the author of the *Trial of Norman Thorne* in the Famous Trials series and the *Trial of A. A. Rouse* in a similar series. She also wrote *Sex Differentiation in Salary* and *Everyday Law for Women*. She was a contributor to the thirteenth edn. of the *Encyclopaedia Britannica* and the author of works and articles concerning the economic position of her sex.

In private life Mrs. Normanton was the wife of Mr. Gavin Bowman Watson Clark (who died in 1948) but as she was a true feminist always maintained her maiden name.

Objection Sustained

Our correspondent in Westminster who sent us a cutting from a local newspaper which was the basis of our Note of the Week called "No Objection" at p. 606, *ante*, tells us that within a week after the publication of that Note the illegal doorways were removed from Douglas Place. It will be remembered that they had been in position for more than two years. We have no means of knowing whether our own Note brought the matter to the attention of the city council's legal advisers, or whether credit for this tardy compliance with the law is due to the *West London News*, and to the member or members of the council who pressed the matter upon the chairman of the highways committee. It was in that local newspaper (our correspondent tells us) that he saw a report of the removal of the gates; upon going to see things for himself he found, a little to his own surprise, that Douglas Place was being used by a number of pedestrians. The city council have a lamp post in the middle, which presumably was there before the closing, and this should help in preventing any serious misuse of the passage way at night. As soon as the gates had been removed a letter from a neighbouring trader appeared in the same newspaper, protesting against the re-opening of the footway, upon which letter the editor properly commented that the question was not whether the footpath had been misused in previous years but whether the public had been deprived of rights by the city council without due legal process. It is satisfactory that the council should, even belatedly, have put themselves on the right side of the law.

West Riding Urban District Councils' Association

The Urban District Councils' Association has a particularly active branch in the West Riding of Yorkshire as was apparent from the subjects discussed at their recent annual meeting and conference. Apart from the important matters dealt with in the annual report there were papers on various subjects including "Advertising local government," the "Welfare of the aged in urban districts," and "Open spaces," as well as addresses by various speakers, including one by Mr. Neville Hobson, M.C., on "Some problems and difficulties of rural authorities." Mr. A. T. S. Robertson, M.A., LL.B., clerk of the Rothwell council, urged that more should be done to advertise local government, both locally and nationally. He quoted the experience of his council in publishing a broad-sheet which was distributed by rent collectors and through the libraries placing a copy in each book as it is borrowed. This seems to be an idea which might well be copied elsewhere. He also suggested that the local authorities associations should combine in developing a programme on local government for instructing and interesting members of the public through television.

In a paper on the welfare of the aged, Mr. G. F. Clegg, clerk of the Rawmarsh council, suggested that urban district councils should take a more active interest in this matter, even though they are not the health and welfare authorities, by seeing that there are adequate services in the area provided both by the statutory authorities and by voluntary organizations. Delegation to urban district councils of health and welfare functions was suggested as the best way to ensure that the special needs of the aged are met. On open spaces, Mr. J. Wakefield, clerk of the Silsden urban district council, drew attention to the powers of the urban authorities and the possibility of obtaining Exchequer grants from the Ministry of Housing and Local Government under s. 94 of the Town and Country Planning Act and the grant regulations made in 1956.

British Evacuees from Egypt

A progress report issued by the Anglo-Egyptian Resettlement Board describes the action which has been taken to assist the 6,000 British subjects who were compelled to leave Egypt. The first task of the Board was to deal with the immediate needs of these people by providing hostel accommodation or maintenance allowances where financial help was needed. Before the Board was established some 3,000 were already accommodated in hostels which were opened and managed by the National Assistance Board or by the British Red Cross Society or St. John Ambulance Brigade on an emergency basis. The Resettlement Board assumed full responsibility for these hostels. The National Council of Social Service set up a citizens' bureaux in each of the hostels and appointed experienced workers to deal with the resettlement and other personal problems of the residents. Members of the Women's Voluntary Service also actively helped. The number in the hostels is being gradually reduced but they still total some 2,000. In addition the Board are paying allowances to about 550 families and supplementing the wages in other cases. Special resettlement grants are

also being made for specific purposes, such as to pay the deposit on a house, for furniture or tools. The current expenditure of the Board is nearly £200,000 a month. £665,000 was spent by mid-July. One of the difficult residual problems will be presented by the number of elderly evacuees, some of whom will not be able to resettle in this country with friends or relatives and consideration is being given to their accommodation in specially provided homes for old people. The Board consider that this should be exceptional, and only where it is impossible to place them in normal family accommodation. Some evacuees have been helped to emigrate to Australia.

COMMON ASSAULT

By G. M. NIGHTINGALE

[In accordance with our usual practice, we afford the opportunity of expressions of opinions, but do not thereby necessarily adopt them—*Ed., J.P. and L.G.R.*]

The Act 9 Geo. 4, c. 31 interposed a form of action in the criminal law frequently invoked in the magistrates' court and one in which the police as a rule have some part to play, although the process is one which they are powerless to advance or restrain. They have a concurrent right to seek a remedy at common law (*R.* v. *Robinson* (1759) 2 Burr. 799; 49 Dig. 749, 1729), but under s. 42 of the Offences Against the Person Act, 1861, which is now the governing Act and which I will subsequently refer to as "the Act," while they may arrest the offender, they can neither as a "party aggrieved" prosecute nor as police officers conduct the prosecution (*Nicholson* v. *Booth* (1888) 52 J.P. 662).

Where the police desire to prosecute in the interests of justice, then they may do so by charging the common law offence (*R.* v. *Gaunt* (1895) 60 J.P. 90). This offence is triable on indictment.

The suggestion has been made that an information can be laid by a police officer under s. 47 of the Act charging the common law offence of common assault, and that this offence then becomes triable summarily under the provisions of s. 19 of the Magistrates' Courts Act, 1952 (*vide* 105 J.P.N. 649 and *The Police Review*, 1955, vol. LXIII, 600).

In the 1957 edition of *Stone*, the footnote to s. 47 clearly indicates that this is the view taken by its learned editors.

It has been suggested that s. 47 of the Act, while it does not create the offence, imposes a penalty in the same way as s. 2 of the Larceny Act, 1916, does with regard to certain kinds of larceny at common law. The first schedule of the Magistrates' Courts Act, 1952, speaks of "Offences under s. 47" of the Act in exactly the same way as it speaks of offences under s. 2 of the Larceny Act, 1916.

It is true, therefore, that this interpretation is strongly supported and one might well ask—why, if the offence may be prosecuted on indictment by the police, should the power not be extended to one of summary trial? It is submitted that there are equally valid reasons for saying that s. 47 does not provide a new method of trying common assault.

Section 42 of the Act provides a very definite procedure for dealing with common assault. In this, as I have already said, the Act creates neither a new offence nor a new method of dealing with it. In much the same way as did the Act of 9 Geo. 4 c. 31, the Act in ss. 42 to 46 provides a code which is clearly designed to regulate the civil and criminal remedies for the old trespass of assault. The suggestion that s. 47 of the Act, as governed by the first schedule of the Magistrates' Courts Act, 1952, now gives a concurrent method of dealing with common assault makes nonsense of the statute. It would mean that the aggrieved party who simply wishes to secure a conviction and punishment of the wrongdoer has a choice of two sections of the Act, s. 47 of the Act carrying the greater penalty, that the use of the words "By or on behalf of the party aggrieved" in s. 42 is in effect surplusage, that the elaborate protection given to the offender by ss. 44 and 45 of the Act is avoided by proceedings under s. 47. Indeed, upon being asked to plead, might not the prisoner charged under s. 42 complain that, in preferring that charge rather than one under s. 47, the prosecution were depriving him of a right to a trial by jury? Likewise, a prisoner charged under s. 47 might claim that so charged he was deprived of the protection of ss. 44 and 45 of the Act. A matter may be an offence under more than one enactment, but to suggest that s. 19 and sch. 1 to the Magistrates' Courts Act, 1952, now amend the Act so that two such different processes can be followed for the summary trial of common assault is an interpretation that can only confuse.

The Magistrates' Courts Act, 1952, by s. 19, gives magistrates a power to try the indictable offences specified in sch. 1. Schedule 1 mentions "Offences under s. 47" of the Act. That section deals with offences of assault occasioning actual bodily harm and adds "and whosoever shall be convicted upon an indictment for a common assault shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding one year." It is quite clear that s. 47 creates one offence only—that of assault occasioning actual bodily harm. It does mention the common law offence but only for the purpose of defining the term of imprisonment to be imposed upon its trial on indictment. It will be said that s. 2 of the Larceny Act, 1916, is also a section which creates a penalty (*R.* v. *Bryant* [1956] 1 All E.R. 340; 120 J.P. 103), but s. 2 is certainly a section which gives a name to an offence. By this section the term "simple larceny" now names a number of offences which might, before 1916, have been either grand or petty larceny. Moreover, by virtue of the same Act, "simple larceny" depends on a new definition of stealing which is contained in s. 1 of that Act and, while it is not proposed to examine this latter aspect at greater length in this article, one cannot fail to appreciate that, while s. 2 of the Larceny Act, 1916, may or may not define and does not create the offences with which it deals, it is a section eminently suitable for use by reference in an enactment which regulates the place of trial for certain offences.

In the writer's submission, the common-sense interpretation of the words "offences under s. 47" is that of offences of assault occasioning actual bodily harm. It is those that may be tried summarily while the special summary procedure in the case of common assault remains available to the aggrieved party. It is proper that the police should leave common assault alone. If there is a danger of a breach of the peace then the Queen's peace may be preserved through other means. If it is desired, in the public interest, to prefer a charge of assault, then by perhaps a happy anachronism the common law procedure is available when, since it is urged that such a case must be exceptional, trial at quarter sessions is not inappropriate.

COMPENSATION FOR LOSS OF OFFICE

The Government and the departments are considering matters to be dealt with in the Local Government Bill which will be presented to Parliament in due course. In this connexion we understand that an assurance has been given to the local authority associations, following the statement made in the House on July 19 last, that it is intended to safeguard the existing superannuation rights of those transferred from one local government employment to another as a result of the reorganization and to make regulations for payments in compensation for loss of office resulting from the reorganization similar to the series made in 1948.

Compensation for loss of office in public employment was introduced into the Superannuation Act of 1859 applying to the civil service: discretion about awards was left in the hands of the Commissioners of the Treasury, subject to a maximum of two-thirds of salary and emoluments. A Treasury minute of that year embodied principles to be applied in making determinations: these included the allowance of one-sixtieth of salary and emoluments for each year of service plus added sixtieths according to years of service, reaching a maximum of ten-sixtieths for 20 or more years of service.

Various local government statutes, commencing with the Public Health Act, 1875, enabled compensation to be awarded to local government officers. In 1933 the Local Government Act of that year, s. 150 and sch. 4, enacted a complete set of new provisions. In 1948 however, a series of regulations were made under various Acts enshrining fundamental differences from the 1933 code. They are the Town & Country Planning (Transfer of Property and Officers and Compensation to Officers) Regulations, the National Assistance (Compensation) Regulations, the Local Government (Compensation) Regulations, the National Health Service (Transfer of Officers and Compensation) Regulations, and the Children Act (Compensation of Officers) Regulations. They were followed in 1949 by the Electricity (Staff Compensation) Regulations and the Gas (Staff Compensation) Regulations.

The 1948 series of regulations were similar to each other in all material respects, such differences as there were arising out of any special circumstances of the services concerned. As an example of the new code we can consider some points from the Local Government (Compensation) Regulations, which provide for payments to persons who lost employment or remuneration as a result of the transfer of rating and valuation functions under the Local Government Act, 1948.

Those entitled to claim were "existing officers," that is those who had eight years' whole-time service in specified employments after attaining the age of 18 without any break of more than 12 months and who, immediately before the material date (the date on which the functions of the employing authority ceased), were employed at least for part of their time on work of rating or valuation. To have his case considered an officer had to establish that the cause of the claim arose not later than 10 years after the material date; enter a claim not later than two years after the date on which the cause of the claim arose; and show that his emoluments had diminished by more than five *per cent.*, or that his office was abolished and he had not been offered a reasonably comparable office, or that his appointment had been determined because his services were not required or because his duties were diminished.

Compensation was calculated on an annual basis, being one-sixtieth of the net emoluments lost multiplied by the number of completed years of service. If the claimant was over 45 years of age at the date of loss a further one-sixtieth was added for every completed year of service since reaching the age of 45, subject to the over-riding maximum of 40-sixtieths of the net loss. In certain cases this provision is more favourable than the 1933 Act provisions where added years are limited to 10: the reason quoted by a Government spokesman when the Health Service draft compensation regulations were submitted to the House was in these words: "We have thought it right in the new code to provide for those over 45 because we feel that those under 45 in present circumstances, and certainly in the field we are discussing tonight, ought to be able to get employment, whereas the older the person gets the more difficult it may become. . . . What seems to be important here is the age of a person rather than the actual years spent in the service."

After compensation has been assessed the authority must make reviews at not more than six monthly intervals for a period of two years. If any other employment is obtained compensation may be reduced. At the end of the two-year period the amount of compensation is determined and is then not subject to adjustment on account of any variation in remuneration other than that which may be received out of public funds.

On reaching normal retiring age the amount of compensation payable is equal to the amount of pension which had accrued to the date of loss under the pension scheme applicable to the employment lost. There are special provisions for officers who become incapacitated or reach an age when they would have had an option to retire.

These are some of the most important provisions of the 1948 series of regulations: the notable differences from the 1933 code will have been observed. For example, the latter provided for payment of compensation for life, such compensation only to be reduced or suspended if the compensated officer was appointed to an office remunerated from public funds and his remuneration, plus his compensation, equalled or exceeded the emoluments of his lost office. The new code, however, provides for remuneration from any alternative employment to be taken into account. Furthermore, except in the case of officers who were pensionable the payment of compensation ceases or is reduced at normal retiring age. No compensation is payable under the 1948 provisions to a part-time officer unless he devotes the whole of his time to a series of similar part-time appointments: under the 1933 Act a loss sustained in connexion with one part-time appointment, albeit the only one held, ranked for compensation. It will also be observed that under the 1933 Act there is no time limit within which the cause of claim must arise, as applies in the 1948 regulations. Further, the earlier code does not make it obligatory for the authority when considering the entitlement to compensation to have regard to the extent to which the claimant has sought suitable alternative employment. Under the latest code also compensation is not payable if the officer has been offered "reasonably comparable" employment: the regulations provide that a person shall not be deemed to have been offered an office which is not reasonably comparable by reason only of the fact that the duties of the office offered are in relation to a different service or involve the transfer of his employ-

ment from one place to another in England or Wales. Lastly, whereas under the 1933 Act code additional sixtieths could be granted ranging from one for under five years' service to 10 for 20 years or more, the latter code limits the grant to persons over 45, although it is true, as we have mentioned, that for these officers an increased maximum has been allowed.

In 1950 the Government insisted on the 1948 compensation provisions being substituted for those of 1933 in a number of extension bills, in spite of opposition. The official view was that a compensation code should be up-to-date, free from anomalies and such as not to cast an unnecessarily heavy burden on public funds. The code should not be of such a character that it encouraged people to settle down as pensioners on public funds but should leave them with an incentive to get reasonable alternative forms of work: in short, the 1933 code was not applicable in an era of full employment. Opponents said that the 1948 regulations were definitely more unfavourable to the persons affected. Further, they were not particularly good regulations and had produced some remarkable results, notably because the decisions of the tribunals set up in different parts of the country were inconsistent. It was also argued that it was undesirable that there should be two codes of compensation for the same body of officers, for whereas those adversely affected by the reviews of county districts under the 1933 Act would be compensated under that Act those affected by county borough extensions under private bill procedure would be governed by the 1948 legislation. All these protests and arguments were rejected and the bills altered accordingly.

Now the question comes again into prominence. It was referred to in June last at the annual meeting of the Society of Clerks of Rural District Councils: they have raised the matter with other societies of clerks hoping to secure a united front in favour of the 1933 Act provisions. We believe that their efforts have not been unsuccessful and that their views have already been adopted by some of the local authority associations.

An indication of the Government attitude will be awaited with interest. It seems to us that the difference in cost between the two codes, so far as officers who may be affected by local government reorganization are concerned, would not be great and that the benefits of the 1933 provisions might well be conceded.

BANKSIDE ARGUMENT

At p. 345, *ante*, we published an article by Mr. A. S. Wisdom, who is known to our readers as a regular contributor, entitled "Queries of Riparian Owners." Another correspondent, who (like Mr. Wisdom) is professionally concerned with the work of river boards and land drainage authorities, wrote offering some reflexions upon what he regarded as omissions or oversights in Mr. Wisdom's article.

It will be understood that we do not accept editorial responsibility for articles acknowledged as contributed, particularly so where the contributor is named and has special knowledge of his subject. We think, however, that it may be helpful to our readers generally to deal with some of the criticisms made—into which we have looked with the courteous assistance of both our correspondents.

First, it seems, in view of *Neath R.D.C.* v. *Williams* [1950] 2 All E.R. 625; 114 J.P. 464, to which Mr. Wisdom referred in an article at 119 J.P.N. 846 (it was also referred to in an article at 117 J.P.N. 106) that the obligation of a riparian owner to cleanse and maintain a watercourse under s. 35 of the Land Drainage Act, 1930, can only arise when the condition of the watercourse is directly attributable to some act for which he is responsible. For example the watercourse may have been trampled by his stock, or become silted up from his gravel workings. There can be no default where there is no general duty to cleanse, and so s. 35 provides no remedy when the condition of the watercourse is due to natural silting up or weed growth, which are probably the most frequent reasons for cleansing.

Next it was suggested to us that Mr. Wisdom was mistaken in answering the fourth of the questions he had posed, *viz.*, "can a person raise his banks to prevent flooding?" As regards the main river, most river boards probably have power under their byelaws to prevent any riparian owner from altering the banks or doing anything which might divert or alter the direction of flow in a river. River boards could also seek the aid of the planning authority in preventing any work which would alter, without their approval, the established regimen of a river. On this matter, however, Mr. Wisdom had set out the common law position as it exists, without reference to any statutory or byelaw restrictions. He agrees that if in a particular case a river board found it necessary to object to banks being heightened, the board could probably invoke its byelaws or request the local planning authority to take action. It may perhaps be pointed out that river boards themselves are continually raising the level of banks when they distribute spoil thereon, taken from the river bed in the course of land drainage operations.

A comparatively minor comment was that the right to take gravel from a stream had not been mentioned among an owner's right. Most river boards, it was said, had byelaws requiring their consent for this. It may, however, be doubted whether this is often commercially important; at the present day gravel is more often worked over a large area of land with the aid of modern machinery. The beds of English rivers, even those containing gravel, are seldom wide enough to allow the use of modern methods.

With regard to culverting, it has been suggested to us that Mr. Wisdom had put the protection given to the river board too high. A river board (it was said) can only prevent the culverting or filling of a channel if there is a contravention of their byelaws, and the byelaws do not apply to the statutory powers of a statutory authority. Moreover, byelaws only apply to the main river. Under part XI of the Public Health Act, 1936, a local authority is only required to "consult" a drainage authority before carrying out the works mentioned in that part of the Act. It seems therefore that a river board can only prevent culverting if it is carried out by a non-statutory body, and if it affects the main river. Do the words "under the jurisdiction" of a river board include any watercourse in the river board area, or only the statutory main river? Upon this Mr. Wisdom's opinion is that these words refer only to the statutory main river, and he agrees that, subject to consultation for what this is worth, local authorities can culvert even a main river under their statutory powers, and need not obtain the river board's consent. We confess, however, that this seems to us rather an

academic point. We doubt whether such a feat would be accomplished by a local authority out of revenue; once sanction to a loan had to be obtained, the sanctioning Minister would in practice give full weight to all representations from the river board.

As regards maintenance of banks, our correspondent thinks most river boards spend a good deal of money upon this. The Thames Conservancy, Mr. Wisdom tells us, only repair banks where the flow of water or navigation might otherwise be interfered with. The Land Drainage Act, 1930, is silent on the point, and he had understood that those river boards who did much work of the sort did so because of local circumstances, such as the existence of adjacent low-lying land.

Finally (omitting for the present one obscure legal issue to which we may advert in a future article or Note of the Week), it is suggested that Mr. Wisdom's answer to his own last query was mistaken. The query related to the enforcement or commuting of an obligation created by tenure, custom, or prescription, to repair a weir or sluice. Sections 36 and 37 of the Land Drainage Act, 1930, confer upon internal drainage boards a discretionary power of commuting, but s. 9 of the Act obliges river boards to do so. Mr. Wisdom agrees that s. 9 is absolute, but points out that decisions of the courts have whittled down the types of obligation which have to be commuted: *see Re Fitzherbert Brockholes Agreement, River Wyre Catchment Board* v. *Miller* (1939) 109 J.P. 379; *Eton Rural District Council* v. *Thames Conservators* (1950) 114 J.P. 279. It is often difficult to ascertain whether anyone is under a specific obligation to repair a particular weir or sluice.

We hope that, in this article, we have contributed to solving some supplementary questions, in a field where there is not, as yet, so much firmly established authority as in some of those with which our readers are concerned.

MISCELLANEOUS INFORMATION

MINISTRY OF LABOUR AND NATIONAL SERVICE ANNUAL REPORT

The report of the Ministry of Labour and National Service for 1956 deals generally with the work of the Ministry in various fields, both national and local, the latter mainly through the local employment exchanges and appointments offices. One of the special problems of these offices is in helping ex-Regular officers to obtain employment. There were 1,296 on the register at the end of the year of whom 707 were unemployed. Of the latter, 275 were between the ages of 46 and 55 and 235 were over 55 years of age. During the year, 1,682 ex-officers registered at the Appointments Offices after their release from the Services.

On the employment position generally throughout the country, it is noted that the average number of persons registered as unemployed during 1956 was 257,000. Although this number was 25,000 higher than the average during 1955, it was lower than in any other post-war year with the exception of 1951. The total number of persons unemployed in December, 1956, when unemployment was at its highest recorded level for the year, was 296,900, or 1·4 *per cent.* of all employees, compared with 215,600 or 1·0 *per cent.*, in December, 1955. An aspect of the work of the department which is of special interest to local authorities and hospital bodies is in connexion with the recruitment of nurses. The report shows that the general position continued to improve in 1956 although the shortage in most mental and mental deficiency hospitals remained acute. It was decided during the year that, while the Ministry should continue to provide an advisory and placing service, certain functions relating to the recruitment of nurses should be taken over by the health departments. During 1956 the Ministry placed 9,503 men and women in whole-time nursing posts, and 1,681 in part-time posts. There were, however, 24,971 notified vacancies unfilled at the end of the year of which 9,245 were for student nurses.

A matter of interest to magistrates and others concerned with the work of the courts is the co-operation maintained between the Ministry, the National Association of Discharged Prisoners' Aid Societies and the Central After-Care Association in efforts to assist discharged prisoners to find employment through the employment exchange service as soon as possible after release from prison. Prisoners who were serving sentences of three months or longer were interviewed while still in prison by an officer from the employment exchange in the locality of the prison. Full particulars of the qualifications, experience and training (including any skill acquired in prison) of each prisoner interviewed were sent to the local employment exchange of the district in which the prisoner intended to live. By this means, and with the co-operation of employers, local officers were able in many cases to place discharged prisoners in employment with little or no delay.

Perhaps one of the most important activities of the department is helping juveniles to obtain suitable employment on leaving school. The gradual decline in recent years in the numbers of boys and girls reaching school-leaving age continued in 1956. There were further decreases in the number of boys and girls given vocational guidance, in those placed in employment, and in the number of young people whose progress in employment was followed up. In view of the substantial increase in the numbers of school-leavers from 1957 onwards and of the increasing need for skilled workers in industry, consideration was given during the year to the problems that would arise and to measures that could be taken to meet the additional demands upon the youth employment service.

On disabled persons, it is noted in the report that as in previous years special services, including industrial rehabilitation and training were provided to assist disabled persons to obtain employment. About 80 *per cent.* of the 7,800 men and women who completed courses at the Ministry's industrial rehabilitation units either obtained jobs or began courses of training within three months of leaving the units.

SWANSEA WEIGHTS AND MEASURES DEPARTMENT

The annual report of Mr. F. W. Brown, chief inspector to the county borough of Swansea, shows a generally satisfactory observance of the various statutes with which the inspectors are concerned. The incidence of incorrect or unjust weighing or measuring appliances being found in use for trade has been very low. Mechanically handled food, weighed and packed automatically at the source of manufacture, showed a high degree of accuracy. The discrepancies were mainly to be found in goods weighed and packed by hand at the place of sale, and were usually accounted for by the human element in weighing, or the failure to check and re-weigh old stock.

Mr. Brown notes the changes taking place with the advent of new housing estates and the tendency for the small "corner shop" to disappear from the older residential areas, giving way, it would appear, to the larger multiple shop and self-service store. The problem of serving widely scattered and partly developed housing estates, he says, has been met by the travelling shop; an up-to-date version of the pre-war hawker. These mobile shops are substantially equipped and no doubt will be a feature associated with housing development for some years to come.

There is this comment on fertilizers and feeding stuffs. "The difficulties imposed by the Act in relation to products that have left the place of manufacture, or are alleged not to be ready for consignment make the deliberate false marking of fertilizers and feeding stuffs almost impossible to prove."

LOCAL GOVERNMENT CONFERENCE

Each autumn, when the annual Conservative Party Conference takes place, delegates are invited to come a day earlier for two sessions on local government; and this year 1,300 enthusiasts accepted the invitation to the Dome at Brighton, for the tenth such conference.

There was no formal agenda, but delegates had been circularized with a summary of the three White Papers which embody the present Government's proposals for local government reforms (Cmds. 209, 9831, and 161.) The conference provides Whitehall with a valuable listening-post, for delegates are encouraged to express their criticisms and suggestions with the utmost freedom, and all the Ministers whose portfolios cover any region of local government were there to listen and make reply.

The conference was opened by Lord Hailsham, whose observations were the more apposite because he had so recently been Minister of Education. He reminded us that there are features of local government of greater importance than the boundaries or rates; what always matters is the quality and enthusiasm of those who give their lives to it. The spirit of voluntary service is the keystone of the whole arch of local government—in the last resort, it is the human element that counts. He often wished that the organs of public opinion would give more attention and more limelight to local government. If central control is over-rigid or over-pernickety, the quality of local government will be certain to decline. He never thought that the gentleman in Whitehall knew best, or better than the gentleman in Welshpool, Wigan, Wiltshire or Woking, about the requirements of their localities. Local government must be local, and must be government.

He asserted that education is the most important function of local government today. Unless local authorities are persuaded that public expenditure on education is necessary to our survival, the outlook is poor. We must invest heavily in education to meet the challenge of the new age; but it was a great mistake to suppose that the only worth-while investment was technical education. The topical earth-satellite challenged all their earlier ideas—it was a triumph of technical education. He would not accept complaints that our own educational system did not give us good value for our money. Its true value was not easy to measure; and it is a prevalent fallacy in the age of statistics that what cannot be measured, does not exist. He and his successor at the Ministry had to face a grave shortage of teachers, buildings, and university places; but we should be proud to know that a school-place now costs less than it did eight years ago. He complained of the steadfast unwillingness of the public to spend more than three *per cent.* of its national income on education.

The conference then turned its attention to the proposals for financial changes, a main aim of which is to increase the independence of local authorities in the raising and spending of their money. Cmd. 209 is aimed at strengthening the rating system and radically recasting the system of exchequer grants. A plan for reducing the dependence of local authorities on percentage grants is designed to reduce central control by departments.

One speaker deplored the general apathy of the public to local government, and asked for the incorporation of more civic courses in school curricula. Another delegate attributed the apathy to the ignorance of contemporary affairs resulting from insufficient stress on modern history.

The proposal to finance the education service by block grants came under fire.

The principal Government proposal is to institute a new general grant to replace existing specific grants towards particular services. The 12 grants which are to be absorbed in the new block grant include those payable for education (other than for school milk and meals), agricultural education, health services, fire services, and child care. A reasoned comment came from Mr. Hardman, of Staffordshire county council, who thought that the change would curb the "spend-happy" habits of local councils. His impression was that electors were so unconcerned about public spending because so much of local councils' expenditure was borne by the exchequer. Extravagance would continue until local people were made to face the responsibility of paying for local council services.

The tone of the speakers who addressed the conference on the new rating proposals was generally unfriendly. The Government intend to re-rate to 50 *per cent.* of net annual value all industry and freight transport, which is at present rated to 25 *per cent.* The payments made by the nationalized electricity and transport industries will be included in the rating system, and the parts of electricity and gas showrooms used as shops will be separately and directly assessed to rates. Several speakers condemned the continual rise in rates, and contended that re-rating would entail further increases.

The morning session was wound up by Mr. Geoffrey Lloyd, Minister of Education, who reminded local authorities that the Russian satellite constituted a serious challenge to our own educational system. The Russian scientist who was credited with a major share in the planning of the satellite was Kapitsa, who had been a contemporary of Mr. Lloyd's at his Cambridge college. It reminded him that this country had produced the best scientists in the world, and yet, within a generation, a nation of peasants had outpaced us in technical education. Mr. Lloyd emphasized that this was a challenge as much to local authorities as to Whitehall.

The afternoon session debated the White Papers on the areas, status, and functions of local authorities. The proposed alterations, published in Cmd. 9831, effect a revolution in the patterns imposed by the Local Government Acts of 1888 and 1894. The Government regard the existing structure as inadequate to present needs, and propose a radical re-shaping.

Major Allen of Newark asserted that the non-county boroughs see in the proposals a trend to take away their present powers and transfer them to the county councils on the ground of insufficiency of population. Several following speakers shared this opinion, and affirmed that middle-sized towns have been slowly losing their powers.

The White Paper proposals do not apply to the structure of local government within the county of London, which has its special problems and requires distinctive consideration. Mrs. G. Legge, of Westminster, urged that this problem was so vast that it deserved a Royal Commission. Congestion of population made it impossible to tackle Greater London piecemeal. If local government was to remain "local," the areas of jurisdiction must not be too big, and if it was to remain "government," local authorities must have real power. The present London consisted of 103 local authorities of different size and status (including three parish councils). This range of councils included one where a penny rate produced £77,000, and another whose penny rate yielded £140, yet both councils had the same powers. She acknowledged the difficulty of unscrambling the unwieldy machinery which has grown up, but was anxious to keep local government local by avoiding the creation of any more L.C.C.'s.

Alderman Bostock of Twickenham cited figures of the polling at elections at different levels—20 *per cent.* for county council elections, 40 *per cent.* in borough council elections, and 60 *per cent.* in Parliamentary elections. He asserted that the contrast between the 20 *per cent.* and the 40 *per cent.* shows where the true interest lies. The county council raises money by precepting on the county districts and is far removed from the people it represents.

Councillor Brooks, of Barton-on-Humber, lamented the general neglect by Whitehall of the small districts. In illustration, he referred to the commission to inquire into the library services—of its 10 members, not one was a representative of the non-county boroughs.

Mr. B. H. Jones voiced the grievances of the new towns. He said that Crawley council demanded the right to take over the new houses in the new town.

Councillor Crabtree, of Colne, Lancashire, reinforced the pleas for the small towns by an impressive recital of the achievements of his own council.

Mr. K. Young, of Durham county, received widespread applause for his appeal for a change in the method of electing aldermen. He claimed that the office was originally designed as a recognition of long and good service; but since party politics invaded the sphere of local government, appointments have been reduced to a farce—and by both parties. He alleged that at Stockton, one councillor of only three years' standing had been elected alderman, whilst another had served 21 years as councillor.

In winding up the debate, the Minister of Housing and Local Government, Mr. Henry Brooke, claimed that the Government was attempting the first major reorganization of local government since 1929. The whole system needs periodical overhauling, and all the viewpoints expressed by the delegates would receive consideration before the White Paper proposals were cast into legislative form. The hope of the Government was to invigorate local government by giving local authorities greater freedom. He noticed the widespread misgiving that too many decisions by local authorities must at present be referred somewhere else. His experience of civil servants was that they did not deserve the criticism for remoteness and lack of understanding often levelled against them. He proposed to set up two Royal Commissions, one for England and one for Wales, to study the problem of grouping authorities. Special attention was needed for the heavily built-up areas, the "conurbations." The reports of the Commissions would be reviewed by the county councils, which should know their own county districts better than any Royal Commission. He had noticed that none of the many speakers had mentioned the cause of the ancient chartered borough, which he had no intention of sweeping away. He had considered what powers this unit should have, and he was anxious that every ancient borough should retain its mayor and mace and corporate property and privileges. He wanted to make no change for the sake of change, but he remembered that there are 10 boroughs where a penny rate produces less than £75, and on such limited resources, it is not possible to carry out the functions of a borough. He wanted to reverse the trend of taking powers from the smaller authorities and concentrating them in the larger.

On the financial proposals in the White Papers, Mr. Brooke said that the main objection to the general grant was that it might restrict educational freedom and progress. General grants did not carry conditions. In future, local authorities would be able to use their own judgment as to how money should be spent. From 1959 onwards, industry will be carrying three times the share of the rate burden it was carrying three years ago. The change from a percentage to a block grant should make local authorities more cost-conscious than before.

He concluded with the remark that he had been cheered by hearing pleas from so many men and women to keep local government "local."

Whether or not local government has suffered from the infiltration of party politics, one unmistakeable gain from the process is that such a Conference as this has become possible.

[We are indebted to the Rev. W. J. Bolt, B.A., LL.M., for the above report.—*Ed., J.P. and L.G.R.*]

CARDIFF PROBATION REPORT

The picture presented by this report is one of increasing pressure on the staff. As regards adults the number of new probation orders was 97—the corresponding figure for 1955 being 60; and as regards children and young persons the figures are 131 for 1956 and 96 for 1955. It seems that unless greater flexibility can be produced in the probation service the steady increase in crime will throw an undue burden on probation officers before their numbers are eventually increased—as they must be if the service is to function with anything like its maximum efficiency.

The increased use of probation for juveniles in this area is all the more striking because of the frequency with which fines are used. Of 695 cases found proved by the juvenile courts in this area no less than 239 were dealt with by fines—a much higher proportion than one finds, for instance, in London.

It is sad to read that the biggest single increase in crime was to be found in indictable offences committed by juveniles: a leap from 226 in 1955 to 348 in 1956 is indeed remarkable. How interesting for the sociologist is the undeniable fact that such increases—for, of course, they are occurring in Britain as a whole, are taking place in spite of full employment and a high wage level. Whatever be the root cause of crime, it is not poverty.

On the bright side is the surprisingly low level of care or protection cases: 56 for the year is a remarkably small total for an urban area of this size. Of these 22 were school attendance cases. Here indeed is something worth inquiry: by London standards these are very small figures. What makes Cardiff children go so willingly to school?

CITY OF SHEFFIELD FINANCES, 1956-57

Sheffield city treasurer, Mr. F. G. Jones, F.I.M.T.A., in the preface to his excellent summary of the financial transactions of the corporation, says: "The reader will see that one word—increase—appears on nearly every page. Local authorities feel the impact of continuous inflation just as private individuals do and there is no service of the corporation unaffected by rising costs." Mr. Jones nevertheless makes the point that net expenditure out of Sheffield rates has increased since 1950 only in correspondence with, and not in excess of, the indexes of retail prices and of wage rates.

The city treasurer reviews the important subject of rating and has some illuminating comments about the mass of rating legislation which has been enacted since 1945 and of the burdens cast upon rating and valuation staffs as a result. The position has been especially difficult in Sheffield because there the corporation, impatient of the delays in bringing the new valuation list into force, resolved in advance of the general revaluation to proceed to make proposals to amend the assessments of all shop, office, warehouse and bank premises in the city to reflect present day values. Although over half the proposals were objected to by the ratepayers concerned, eventually increases in value were confirmed in practically all cases. This, says Mr. Jones, involved the rendering of nearly 30,000 rate accounts covering periods of up to three years and the subsequent recovery of amounts due, which totalled nearly a million pounds. Then came the general legislation, instalment by instalment. The latest, the Rating and Valuation Act, 1957, reduced the assessments of shops, offices and certain other properties by one-fifth or one-seventh: approximately 15,400 properties were affected by these alterations. The treasurer mentions that ratepayers have been much perplexed by continual alterations in rateable values and this is not surprising in the circumstances he quotes where some ratepayers have received four consecutive rate accounts prepared on different bases. In addition to bewildering the ratepayers this situation has thrown much additional work on the rating staffs who have had to deal with the public's queries.

From time to time the Government is petitioned to place sources of revenue alternative or additional to rates at the disposal of local authorities: it may be wiser, however, to press first for de-rating in its various aspects to be abolished and thus secure a just and sound measure of contribution on the existing basis.

As elsewhere the slow progress being made by revaluation courts is a matter of serious concern in Sheffield. During 1956-57 5,472 ratepayers made proposals to reduce their assessments. Of these, the treasurer informs us, 1,403 were subsequently withdrawn, but of the remainder only 208 had been dealt with by the valuation court, leaving 2,371 still awaiting action.

Statistical tables with explanatory text give information about each of the services provided by the corporation and summarize its financial position. On this special occasion there is also a summary of the Government's grant proposals: the replacements of specific grants by the general (block) grant will, it is estimated, benefit Sheffield by some £280,000.

ROAD CASUALTIES—AUGUST, 1957

Casualties on the roads of Great Britain reached a peak in August, when 531 people were killed and 6,581 seriously injured. In addition, 21,396 were slightly injured, making a total for all casualties of 28,508.

The number of deaths was, however, 37 less than in August, 1956. This is a decrease of 6¼ *per cent.*, although traffic on the main roads was estimated by the Road Research Laboratory to be 6½ *per cent.* heavier than a year ago. There was an increase of 125 in the seriously injured but a decrease of 95 in the slightly injured, making a net decrease in the total of seven.

A remarkable feature of the casualty figures, compared with those for August, 1956, is that there were 4¼ *per cent.* fewer casualties in daylight and 23¼ *per cent.* more casualties during hours of darkness. Police reports for previous months show a similar trend. Extra care will, therefore, be necessary now summer time has ended.

Pedestrian casualties during the month totalled 5,232 including 182 deaths. These figures show a decrease of 409 in the total and of 17 in fatalities. Casualties to drivers and passengers in vehicles other than motor-cycles were also fewer, totalling 10,079, a decrease of 614.

There was, however, a marked increase in casualties among motor-cyclists compared with a year ago. These numbered 7,934, an increase of 881. Casualties to pedal cyclists were also up, totalling 4,971, an increase of 138.

During the first eight months of the year there were 176,647 casualties on the road. This total is 939 less than in the same period of 1956, and included 3,323 deaths, a decrease of 148. The figures for this period as a whole show the same pattern as those for August—decreases among pedestrians and drivers but increases among pedal cyclists and motor-cyclists.

CHICHESTER RURAL FINANCE, 1956–1957

The treasurer of Chichester rural district council, Mr. A. R. Hayman, has published the annual accounts of the council as promptly as usual (the Consolidated Balance Sheet was signed on June 14), and as cheaply as possible (well-cut, clear stencils have been used). Mr. Hayman, in common with a growing number of other financial officers, has adopted and applied in his abstract the recommendations of the Council of the Institute of Municipal Treasurers and Accountants regarding the form of published accounts of local authorities.

The year's working on general district revenue account resulted in a surplus of £9,500, thus increasing the surplus carried forward to £37,500. By comparison a penny rate produces £2,900 and the surplus is therefore equivalent to a rate of 1*s.* 1*d.*: it is not, of course, entirely represented by cash. The rates levied in the year were 3*s.* 3*d.* for district council purposes and 9*s.* 8*d.* for West Sussex county council.

Arrears of rates at the year end totalled £10,000 and were £7,000 in excess of the previous year. This was due, as Mr. Hayman points out, to the fact that a substantial number of ratepayers took advantage of s. 1 (7) of the Rating and Valuation Act, 1955, to pay rates only on the 1955–1956 assessments pending settlement of their valuation appeals.

Chief items of net expenditure were refuse disposal and sewerage, with the expenses of central departments third in order of magnitude. The important housing service cost the ratepayers of Chichester nothing: total expenditure of £128,500 was more than covered by £99,000 paid by tenants and £33,000 exchequer subsidy. The full surplus for the year was £4,500, and the accumulated surplus £11,000. As the repairs account has a surplus

of £36,500 the housing financial position is a very happy one. The council have built 2,014 dwellings under various Housing Acts. Exclusive weekly rents of three-bedroom parlour houses built before the war range from 16*s.* 2*d.* to 16*s.* 8*d.*: for those built since the war the tenants pay 22*s.* plus rates. Like many other authorities Chichester has not found many purchasers for houses it is prepared to sell: three have been sold in four years.

Rateable values in Chichester are relatively high: the figure of £15 6*s.* per head of population will debar the authority from a share of the rate deficiency grant. The typical ratepayer lives in a house of £30 rateable value and pays 7*s.* 5*d.* in rates weekly.

The water undertaking was profitable: there was a surplus for the year of £1,480, compared with a deficiency of £800 in the previous year.

Loan debt at March 31 totalled £3,070,000 of which £2,330,000 was for housing. Mr. Hayman refers to the difficulty of raising loans during the past year and we can only commiserate with him on the likely future position of the capital market. This can be said, however: by its prudent financial management in the past Chichester R.D.C. has put itself in a strong position to combat any financial storms to come.

COUNTY OF NORTHAMPTONSHIRE: CHIEF CONSTABLE'S REPORT FOR 1956

The authorized establishment is 338. The actual strength on December 31, was 316, a gain of six during the year. The chief constable reports, however, that the year has not been an easy one, " the operational strength available in the larger urban areas having been far below that required to give the proper and adequate supervision essential to efficiency." Some sneak thieves have taken advantage of the lack of policemen on the beat. As the number of vacancies is only 22 out of a total establishment of 338, the chief constable's comments would seem to imply that the establishment will need increasing as soon as the actual strength equals the present establishment. The same difficulty is probably experienced here as has been noted in other reports, that the increasing building on the outskirts of urban areas calls for more policemen to supply adequate protection in those areas.

In a comment on the police cadets the chief constable remarks that on the whole those who have returned to the force after their national service show promise of becoming good policemen. He is convinced that the effect of national service, with its breakaway from home influence, is to make the cadets more mature and self-reliant and in every way more fitted for their service in the force.

In the county as a whole there were 1,520 recorded crimes, 114 more than in 1955. Breaking offences showed a net increase of 48 and larceny from motor vehicles one of 41. Of the 1,520 crimes juveniles were responsible for 307, 215 larcenies, 40 breaking offences and 52 other crimes. Eleven of these juvenile offences were committed by youths who had absconded from an approved school. There were 27 such abscondings from one school and three from another.

Metal thieves were responsible for much of the 114 increase in crimes referred to above. They were active in Northamptonshire and in surrounding counties. They avoided detection for a considerable time but the combined efforts of the C.I.D. and the uniformed branch eventually led to two gangs being brought to justice.

Once again there was an increase in " s. 15 " offences. In 1955 the total increased from 21 to 28. In 1956 it rose to 35. Even this figure does not, in the chief constable's view, tell the whole story, because he thinks that a large number of accidents can be attributed to the driving of persons who are more or less under the influence of alcohol, but who escape detection. This may well be true, but if the persons concerned escape detection it is very much a matter of surmize whether they were or were not under the influence of alcohol.

There were 2,131 traffic accidents reported to the police in the county, and 1,241 resulted in death or injury. This latter total is 533 more than in 1955. Six hundred and eighty-one, over half, of these accidents, were attributed to the negligence or error of judgment of vehicle drivers (excluding cyclists), and 134 to cyclists. Pedestrians were blamed for 165, making a total of 980 out of 1,241 which were attributed to human error in one form or another. It is too much to hope that we can eliminate human error, and therefore it is incumbent on all road users to act on the presumption that someone else may make a mistake and to drive, ride or walk accordingly. On so many occasions the result of one person's error could be minimized by extra care on the part of someone else, and it is this extra care that can save accidents. Motorists in particular should take this to heart.

REVIEWS

Book-keeping for Solicitors. By R. J. Carter. London: Butterworth & Co. (Publishers) Ltd. Price 27s. 6d. net.

This is the second edition of a book prepared by Mr. Carter, who is a Fellow of the Institute of Chartered Accountants and was formerly lecturer in book-keeping and trust accounts to the Law Society's School of Law. Its purpose is to make the student in the solicitor's branch of the profession acquainted with the principles and practice of book-keeping, both within the office and in business affairs, where the practising solicitor has to understand the financial position of his clients. Solicitors' book-keeping is specialized, and the penalty for a failure to keep correct accounts is heavy. Obviously therefore, the articled clerk must obtain a thorough acquaintance with the mode of keeping the internal accounts of a solicitor's office. It is, however, not enough for him to know how the accounts of his own firm should be kept; he must be able to understand the general principles of book-keeping, if he is to follow the commercial transactions about which (when something goes wrong) he will be asked to advise. The present work accordingly begins with the fundamental principles of double entry. What the author called " the book-keeper's point of view " is explained in relation to assets and capital, liabilities, profit and loss and so forth, leading to the final result in a properly presented balance sheet. This is followed by the mechanics of the process, with some excellent diagrams illustrating principles and practice, after which a number of details are explained. Before coming to the solicitor's own books of account, Mr. Carter deals thoroughly with the methods of book-keeping for a trading business, distinguishing between an ordinary partnership and a company, so far as the requirements of company law affect accountancy. Emphasis is laid throughout on the importance of studying the examples which are given; thus, at the end of that part of the book which deals with trading accounts, there are some 30 pages of extracts from account books interspersed with blank pages for the student's notes. Finally, Mr. Carter comes in part III of the book to the solicitor's own accounts, where the special relationship of solicitor and client is made clear, so far as concerns responsibility for the client's monies, and it shows that the fundamentals of double entry book-keeping are applicable, in the same way as they are in trade. After bringing this home to the student's mind, it is further pointed out to him that the solicitor may often have custody of chattels and documents which are not matters of book-keeping record, although it may sometimes be necessary to keep a record according to value. It is also pointed out that (in contrast to most ordinary commercial accounts) it may often be necessary in a solicitor's office to refer to records of matters which have been lying quiet for many years, which means that the original entries should, so far as possible, explain themselves. Here again the descriptive matter is followed by some 20 pages of extracts from account books, showing the student the sort of entries which will be seen in the cash books and the clients' ledger, and other books which the solicitor must keep in order to satisfy the statutory rules, which are duly printed in an appendix.

The greatest merit of the work is, perhaps, the emphasis laid upon the fact that solicitor's accounts, although specialized and governed by special legal provisions, are essentially a species of accounts kept for business purposes, and that the solicitor will not be safe unless he has a reasonable understanding of the accountant's art. The articled clerk who has thoroughly mastered Mr. Carter's exposition, especially the practical examples, will be well set on the road to safety when he comes to handle the property of clients or to investigate and advise upon a client's business affairs.

The Sale of Goods. By P. S. Atiyah. London: Sir Isaac Pitman & Sons, Ltd. Price 25s. net.

This is a book of handy size upon a subject which is of constant importance to practising lawyers, as well as a set subject for higher legal examinations.

The learned author has resisted the temptation merely to annotate the Sale of Goods Act, and has treated the subject in narrative form and in its relation to the law of contract generally. On the other hand, he has recognized that decided cases arising out of a sale or alleged sale of goods may have more to do with the law of contract generally. He has, however, discovered the interesting fact that the majority of cases on mistake, as affecting contracts, have had to do with the sale of goods, and he has therefore introduced a chapter on

mistake after dealing in general terms with the nature and formation of a contract of sale. After this the book proceeds to discuss differences between different types of goods, and the nature of conditions and warranties. It then proceeds in separate parts to set out the duty of the seller and duty of the buyer, when an enforceable contract has been made.

Part IV of the book, under the general heading of effects of the contract of sale, explains the passing of property and the transfer of title, amongst other matters. Finally, the remedies of the parties both real and personal are fully dealt with.

Mr. Atiyah is a member of the English bar and a former law scholar of an Oxford college. He is now a lecturer at the University of Khartoum. In his preface he disclaims an intention to provide for the needs of students in particular, and modestly doubts whether the book will be sufficient for the needs of practitioners. As against this, we think it will be found useful by practitioners, none the less because the learned author's background has enabled him to detect noticeable points in English law which have not yet been the subject of judicial decision in this country. If the book is regarded as one for students, the learned author's experience has perhaps had something to do with the success with which he links general legal concepts to practical examples.

The Rent Act, 1957. By Robert Steel. London: The Royal Institution of Chartered Surveyors. Price 15s. post free.

This is yet another of the little books to which we have referred already, produced by professional bodies for the purpose, primarily, of helping their own members to understand the law of rent restriction as pulled about by the Rent Act, 1957. Mr. Steel is a member of the bar, and also assistant secretary of the Royal Institution of Chartered Surveyors, from whom the book may be obtained. Naturally he has designed it for use by surveyors advising clients, but it will be useful to all those concerned with property.

Its method of arrangement is to give a general introduction to the Acts, followed by an outline of the Act of 1957, and then detailed treatment of dwelling-houses released from control. This is followed by some 40 pages dealing with controlled rents in England and Wales; with those for furnished lettings, and then a similar chapter for Scotland. Long tenancies as affected by the Landlord and Tenant Act, 1954, and the Rent Act, 1957, come next and there is a chapter of miscellaneous provisions, relating to special cases and to the obligation to keep premises fit for habitation.

The appendices give various useful calculations and lists of forms and duties. It is a workmanlike little book which can conveniently be kept at hand by members of other professions, as well as those for whom it is mainly intended.

The Rent Acts Manual. By Ashley Bramall. London: Sweet & Maxwell, Ltd. Price 3s. 6d. net.

The purpose of this book is in the preface stated to be limited. It is a practical guide to the Rent Acts as they stood at the beginning of September, 1957, and is intended for immediate use. In due course new editions may be expected of several existing works dealing with the law of rent restriction, but meantime the practitioner has to cope with a far reaching reconstruction of the whole fabric of the Acts. The learned author was responsible for the *Current Law Guide* to the Rent Act, 1957, and has drawn, where necessary, upon this and upon the Rent Restrictions Guide by Mr. L. A. Blundell and Mr. V. G. Wellings, for purposes of the law as it stood before that Act.

Provisions of the Rent Restrictions Acts which have been repealed by the Act of 1957 have been omitted entirely, upon the view that where it was necessary to refer to them the practitioner could turn to existing books, and that it would be more convenient for the learned author's purpose to print here the new provisions uncomplicated by the old. Provisions of the older law still remaining in force are, of course, included.

After dealing with the general limits of control and incidents of control, the learned author passes to the different controlling provisions of the new Act, and particularly the transitional provisions. The control of rents occupies the middle portion of the book, and is followed by a long chapter on the recovery of possession, and by necessary information upon long leaseholds, furnished lettings, and a variety of miscellaneous matters.

The arrangement adopted is narrative exposition of the law under appropriate headings, followed by the text of all relevant statutory provisions, from 1920 to 1957 inclusive, and of the related statutory instruments.

The learned author and his publishers are to be congratulated upon producing so complete a work so soon after Royal Assent. So far as we can judge at first sight, the work (which was completed in August and reached us in September) gives all the information which the practising lawyer will require. We are, however, bound to record our regret that the table of cases gives no references to reports, and that in the footnotes the cases appear to be furnished with no more than a single reference.

Mr. Megarry's book on rent restriction, issued by the same publishers, has in recent editions given the full apparatus of case reference, and at the cost of some increase in size has thereby become enormously more valuable for practitioners who may not have at hand a particular report cited for a case; in the present work it will be a recurring nuisance, and often a source of some delay, to have to look elsewhere because of the limit adopted in citation.

"Taxation" Key to Income Tax and Surtax. By Ronald Staples. London: Taxation Publishing Company, Ltd. Price 10s. net.

We have for some years regularly noticed this publication, which is brought out in two stages. The first gives the provisions of the budget, and the second incorporates necessary alterations and adjustments to give effect to the Finance Act as actually passed. Those of our readers who have to do with matters of taxation will already be familiar with the ingenious method by which this work is made up, so that any required piece of information can be found without delay. The issue now before us is the Finance Act edition for the present year, which will hold good until next year's budget.

ERRATUM

We regret the name of the author of "The Road Traffic Act, 1956," was wrongly spelt in the review published at p. 681. It should have read as being by Robert Schless.

BOOKS AND PAPERS RECEIVED

Abolish the Blasphemy Laws. Price 6*d*. By Robert S. W. Pollard. London: Society for the Abolition of the Blasphemy Laws, 40 Drury Lane, London, W.C.2.

Key to Income Tax 1957/8. Budget edn. 10*s*. 5*d*. post free. Taxation Publishing Company, Limited. 98 Park Street, London, W.1.

PERSONALIA

APPOINTMENTS

Mr. A. J. A. Hanhart, O.B.E., LL.B., has been succeeded by Mr. J. B. Izod as solicitor to the Royal Automobile Club, as from September 1, last. Mr. Hanhart was appointed some months ago as secretary and associate section manager to the club. Mr. Izod had been Mr. Hanhart's senior assistant solicitor for the past 10 years. Messrs. Percy Short and Cuthbert, of Clock House, Arundel Street, Strand, W.C.2, have been appointed consulting solicitors to the club.

Mr. Donald Willgoose at present deputy town clerk of Widnes, Lancashire, has been appointed to the office of clerk and solicitor to the Huyton-with-Roby, Lancashire, urban district council as from January, 1958, to fill the vacancy created by the resignation of Mr. H. E. H. Lawton, who retired on June 30, last.

Mr. Richard Burdge, whose appointment to succeed Mr. J. Barwick, clerk to Clutton rural district council, from January 1, next, was reported in our issue of October 12, last, began service as a junior clerk to Axbridge rural district council and will soon have completed 50 years in local government.

Inspector Leonard North has been appointed to succeed Superintendent Leonard Quelch as superintendent and deputy chief constable of the city of Oxford on January 1, next, on Superintendent Quelch's retirement. Inspector North is 48 years of age and he went to Oxford in 1930 and was promoted inspector in 1950. Superintendent Quelch, who will be 60 on December 15, next, joined the Oxfordshire constabulary in 1920. He transferred to the city police in 1925.

Miss B. K. Crofton has been appointed a whole-time probation officer in the London probation service as from September 9, last, following a Home Office course of probation training.

Miss G. F. Rawlings has been appointed a whole-time probation officer in the London probation service as from September 16, last.

Miss Joan Chamberlain has been appointed whole-time probation officer at the Grimsby office of Lincolnshire probation area. Miss Chamberlain commenced her duties on September 30, last.

Mr. Eric Dennis has been appointed whole-time male probation officer at the Scunthorpe office of Lincolnshire probation area. Mr. Dennis will take up his duties on November 1, next. He is at present a probation officer at Birmingham.

Mr. R. S. Borner has succeeded Mr. F. C. Fawkes, C.B.E., as secretary to the Chartered Auctioneers' and Estate Agents' Institute. Mr. Borner was from 1947 to 1957 secretary to the Land Agents' Society.

RETIREMENTS

Mr. John Flowers, Q.C., has retired from the recordership of Southend, having reached the compulsory retiring age of 75. He was appointed recorder of Guildford in 1930 and was appointed to Southend in 1937.

Dr. H. R. R. Tee, clerk to the justices for the Tower Hamlet division of London, is to retire in November. He is a former town clerk of Hackney.

Mr. Edward Bishop, O.B.E., D.M.A., retired from the secretaryship of the Local Authorities' Conditions of Service Advisory Board, on September 30, last. Mr. Bishop has devoted 40 years to the improvement of employer–staff relations in local government. When Whitleyism was still scarcely thought of in 1917 he became assistant secretary to the Lancashire and Cheshire Local Authorities' Association which regulated service conditions in the area. Five years later he became employers' secretary to the earliest local government Whitley Councils in Lancashire and Cheshire. These had been part-time posts, but in 1930 Mr. Bishop severed his link with Manchester corporation (whom he had served as labour officer) and became full-time employers' secretary of Whitley Councils in local government throughout the country. Mr. Bishop's successor is Mr. R. E. Griffiths, former director of establishments, London county council.

Mr. Henry Stephen Baldwin, who has been county court clerk at Banbury and Chipping Norton, Oxfordshire, for 34 years, is retiring at the end of October. He started county court work after the first world war. He has been in charge at Banbury since 1942.

Chief Superintendent Harry Edward Boreham, acting chief constable of East Suffolk, is to retire in November, after being a member of the East Suffolk force for 38 years. Mr. Boreham, who is 65 years of age, became acting chief constable on the recent death of the chief constable, Lieut.-Col. A. F. Senior. Before entering the police force he had served from September, 1914, until March, 1919, with the 11th Battalion of the Essex Regiment, being awarded the Military Medal and the Meritorious Service Medal. When he joined the East Sussex constabulary in 1919 he was first stationed at Brantham. He stayed there for 11 years, moving to Southwold in July, 1930, upon his promotion to sergeant. In September, 1931, he took over the Woodbridge section of the force and four months later was promoted to inspector. In February, 1936, he was promoted to take charge of the Lowestoft division as superintendent. He was awarded the M.B.E. in the New Years' Honours List of 1942. In June, 1942, he took over the Ipswich division of the East Suffolk police, his position until April, 1954, when he became deputy chief constable of East Suffolk. Last January he received the Queen's Police Medal for distinguished service.

OBITUARY

Mr. O. J. B. Cole, chief constable of Worcester from 1923–1928 and chief constable of Leicester from 1928–1955, has died at the age of 67. Mr. Cole's father, Mr. Oswald Cole, was chief constable of Oxford for 27 years.

Ex-Superintendent Michael McDonough, former deputy chief constable of Wallasey, has died at the age of 66.

MAGISTERIAL LAW IN PRACTICE

Western Daily Press. August 30, 1957.

CHOSE PRISON—AND CLEAN START

When Cornelius Joyce (35), *of no fixed address, was fined* 10s. *at Taunton on Saturday for being drunk he was given a fortnight to pay. But he wanted to get the matter cleared up quickly, so he went out into the town to borrow the money.*

" I did not get the money, but I got some drink bought me all over," said Joyce when he was back before Taunton magistrates again yesterday. He admitted being drunk and incapable at 8.55 *on Saturday evening in Station Road, Taunton.*

The magistrates were told that Joyce had 1s. 4½d. *in his possession.*

He was fined £1, *with the alternative of* 14 *days' imprisonment.*

Told that he would not be allowed time to pay, Joyce, upon the advice of the clerk of the magistrates (Mr. E. J. Weston) asked for the alternative of seven days' imprisonment for the offence for which he was before the court on Saturday, to be enforced— " so that I can make a clean start when I get out."

The magistrates agreed, stating that the sentences should run concurrently.

Under s. 69 of the Magistrates' Courts Act, 1952, the court must allow at least seven days for the payment of a fine, if the offender fails to pay on the occasion of his conviction unless—

(*a*) he appears to the court to have sufficient means to pay the sum forthwith ; or

(*b*) on being asked by the court whether he wishes to have time for payment, he does not ask for time ; or

(*c*) he fails to satisfy the court that he has a fixed abode ; or

(*d*) there is some other special circumstance appearing to the court to justify immediate committal (subs. (1) and (2)).

Where time is allowed for payment an alternative of imprisonment cannot be fixed at the time of conviction unless the offender is present and the court determines that for special reasons, whether having regard to the gravity of the offence, to the character of the offender or other special circumstances, it is expedient that he should be imprisoned without further inquiry in default of payment (subs. (3)). The court's reasons must be entered in the register (r. 44, Magistrates' Courts Rules, 1952).

Where a term of imprisonment has been imposed as provided by subs. (3) then, if at any time the offender asks the court to commit him to prison immediately, the court may do so (subs. (4)).

"BEARD OF FORMAL CUT"

In this country it can be said—more appropriately perhaps than elsewhere—that there is a time and a place for everything. To the Englishman it is not so much what he does that matters, as how, where and when he does it. In saying this, we are not thinking of such highly controversial issues as those dealt with (for example) in the Wolfenden Report, but of the ordinary, everyday occupations of ordinary, everyday people.

Such matters are not, in the normal way, what the journalist calls "news." Whether, for example, a man shaves his lips and cheeks, or whether he allows his beard to grow, is a question of personal taste or, at most, a matter between himself and his immediate family. A change in his shaving habits will have no earth-shaking results. But put the same man into the uniform of some branch of Her Majesty's Forces, and the question at once becomes a matter of concern to Authority. In the Royal Navy beards, though not obligatory, enjoy the *cachet* of tradition, and give the sailor a seasoned air of having successfully survived many a tough fight with wind and weather. Beards carry with them a whiff of Elizabethan swagger, a touch of Drake, Frobisher and Raleigh. Nelson, it is true, was clean-shaven, but many a famous sailor, before and since his day, has allowed his facial hair to grow—a symbol of inurement to hardships afloat, of contempt, perhaps, for the fal-lals of life ashore, of indifference to the foppish fashions of lubbery landsmen everywhere.

But for the sailor, on his person as on his ship, everything must be spruce and trim. There must be no half measures—no scraggy, unkempt hairs sprouting thinly on an otherwise smooth skin. If you are going to grow a beard in the Navy, you must keep it, so to speak, fully-rigged—a dense thicket of undergrowth beneath the jungle that covers lips, cheeks and throat. A moustache without a beard is an outrage—neither one thing nor the other. Whether fiercely bristling, fully curled or aggressively clipped, it is no substitute, in a seaman's eyes, for the real thing. It is no use trying to convince him that the difference is one only of degree—you can tell that to the Marines.

In the Army all this is reversed. Though no longer subject to the tyranny of a mandatory injunction, as in the 1914 War ("The lower lip will be shaved, but not the upper lip. Whiskers, if worn, will be of moderate length"), the soldier is encouraged to cultivate a moustache, the nature of which varies according to his rank. The Regimental Sergeant-Major's is usually a long, curled and upward-reaching affair, twirled, and perhaps waxed at the ends, which gives his face an expression at once supercilious and fierce. The subaltern's is often of the variety known as the "tooth-brush," close-clipped and short, imposing an air of restrained severity upon his naturally callow and youthful features. The general officer goes in for the same sort of thing, grown-up; a more extensive growth upon his stiff upper-lip, with a shade of grey in it that speaks of years of seniority and distinction. But there are no beards. What effect the appearance of an unshaven under-lip would produce upon all these gallant men before described does not bear thinking of. How they would view a full, shaggy growth, of the kind popular in the Senior Service, is a question too awful to contemplate. "Full of strange oaths, and bearded like the pard" was an apt description of the soldier in Shakespeare's day. The former characteristic he still preserves, but of the latter there is no vestige to be seen.

As to the Royal Air Force, so much has been said and written, in earnest and in jest, upon the subject of the "handle-bars" that were in vogue during the Second World War, that it would be an anticlimax to investigate the prevailing fashion. The episode that has given rise to our present survey comes from the metropolitan police. It found its way into the news because considerations of time, place and manner thrust themselves upon the public eye.

According to Police Regulations (*The Times* tells us) a constable is permitted to wear a beard; the regulations also state that he must parade on duty with "clean and tidy appearance." Some weeks ago the press was electrified by the announcement that a young officer had fallen between these two stools. He had grown, or was growing, a beard; the beard was regarded by his superiors as an unsatisfactory one; he had been directed to shave off the nine days' growth, but had refused. As a breach of discipline the act was not so heinous in itself; but the offender belonged to the force on duty at Buckingham Palace which, as everybody knows, holds up the mirror of English life and custom both for Londoners and for foreign visitors to admire. So the nine days' growth became a nine days' wonder; Authority was obdurate, the officer recalcitrant. Suspension from duty was followed by the preferment of two charges (1) being untidy on parade and (2) disobeying an order. Findings of "Guilty" were pronounced, and he was duly ordered to resign.

Thus ended Act I of the drama. But persistence is a virtue, particularly in "the Force," and this victim of official severity was not minded to go quietly. In accordance with the provisions of the Police (Appeals) Acts he appealed against both findings and sentence.

Excitement rose to fever height when, after a nine weeks' interval, the Home Secretary's decision was announced. That functionary seems to have exercised the wisdom of Solomon; while upholding the findings of "Guilty," he substituted a reprimand for the punishment originally imposed. So the erring constable became free to return to duty. What has happened to the beard we are not told, but there seems to be a symbolic significance in the mystic number nine that recurs throughout the case. One result of his reinstatement is that the successful appellant has nine weeks' pay standing to his credit.

Quite apart from considerations of natural human sympathy, we feel it would be a pity to discourage individuality of this kind. Those of us who remember the illustrations to the Sherlock Holmes stories in the old *Strand Magazine* must often since have felt a nostalgia for the days of the Victorian policeman who, whether in the person of Inspector Gregson or Lestrade, or someone of lower rank, was always shown wearing a shaggy growth of beard and whisker. Whether the patriarchal appearance of policemen (and civilians too, for that matter) in those far-off days was calculated to inspire confidence and respect, or whether it was then, as it sometimes is in Chelsea and Hampstead today, a matter of hiding a weak mouth or a receding chin, we shall never really know. But of its picturesqueness in the drab London scene there can be no question; and to insist that what is good enough for H.M.S. *Imperturbable* is not good enough for Cannon Street Row, or even Buckingham Palace, is no less than barefaced intolerance.

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Children Act, 1948—*Resolution assuming parental right—Parent's objection—Complaint by local authority.*

The above section dealing with the assumption by a local authority of parental rights provides by subs. (2) that a parent may serve a notice in writing on the local authority objecting to the resolution, in which event (subject to the provisions of subs. (3)) the resolution shall lapse at the expiration of 14 days.

Sub-section (3) provides that "the authority may not later than 14 days from the receipt by them of the notice complain to a juvenile court . . . and in that event the resolution shall not lapse . . . until the determination of the complaint."

The question I want to know is as follows:

Is it sufficient for the complaint to be made to one juvenile court magistrate (within the period of 14 days) or should the complaint be made (within the period aforesaid) before two juvenile court magistrates sitting as a juvenile court ?

It will be realized that if the complaint is laid before one magistrate the eventual hearing before the juvenile court will not normally take place within the period of 14 days.

ULISA.

Answer.

The section requires that complaint be made to a juvenile court, and there appears to be no authority for the complaint to be made to one justice. As the complaint must be made not later than 14 days from the receipt of the notice of objection by the local authority, it may be necessary for a juvenile court to be held specially for that purpose, if one is not due to be held within that period.

If the complaint is made within the period, and a summons is issued, it can be heard and determined after the expiration of the period.

2.—Criminal Law—*Incidents short of actual crime—Can perpetrator be dealt with in a court ?*

Over a period of a year a man has paid money to young boys and girls under the most peculiar circumstances. All the incidents have occurred inside a wood and on some occasions a child has found the man already tied up with rope, and on others he has asked them to tie him up. On one occasion he was tied and untied by the same child, and had remained tied up all night.

No indecency or assault of any kind is involved, but quite obviously the possibility of a serious crime is always present. The man now admits the incidents, but can offer no explanation of his conduct.

I have read your notes on *Wilson* v. *Skeock* (1949) 113 J.P. 298, and also your comments on a case reported in the *Newcastle Journal* which is published at 120 J.P.N. 493.

Can you tell me if this man can be brought before a court? If so, upon what charge ? HONOM.

Answer.

Many actions are morally or socially reprehensible, but it does not follow that they are thereby illegal. In our opinion, this is the position in the case outlined by our correspondent. It might be said that a breach of the peace was likely to occur if one of the fathers of the children decided to take the law into his own hands, but, in that case, it would seem that the proper person to be bound over would be the father and not the man (*see* the quotation from *Wilson* v. *Skeock*, *supra*, at 120 J.P. 493). In our opinion, this is a case where the man ought to be advised to take medical advice.

3.—Criminal Law—*Offences Against the Person Act*, 1861—1. *Aggravated assault under s.* 43—*Summons.* 2. *Grievous bodily harm—Charge under s.* 18 *reduced to one under s.* 20.

1. A commits an assault on a female, which appears to justify a charge under s. 43 of the Offences against the Person Act, 1861. The form of the indictment in *Oke* suggests that the proper way to bring him before the court would be to issue a summons under s. 42 of the same Act and that the circumstances of the case would entitle the court to convict him under s. 43. In view of the fact that police officers do not normally act as informants under s. 42, is it in order to issue a summons under s. 43 or should it be under s. 42 with the aggrieved person as the informant?

2. A is arrested and charged before the court with an offence against s. 18 of the Offences against the Person Act, 1861 and is remanded to a later date. Subsequent examination of the whole of the evidence together with the fact that one of the material witnesses is unable to attend the hearing suggests that the case could properly be dealt with under s. 20 of the same act. Would I be right in asking the court for permission to withdraw the charge under s. 18 and prefer a fresh charge under s. 20? I might add that it is considered that the arrest was justified as it was anticipated that a further breach of the peace might be committed. GOLEL

Answer.

1. A summons under s. 43 of the Act is not possible. The aggrieved person should apply for a summons for assault, and if the court thinks it of such an aggravated nature that the punishment provided in s. 42 is not adequate, it can then apply the increased punishment provided for in s. 43.

2. The defendant can be further charged under s. 20 of the Act, and the prosecutor can then ask the court's permission not to proceed on the charge under s. 18 if the evidence is such that the graver charge could not be sustained. We find it difficult to visualize any circumstances under which the inability of a witness to attend would justify proceeding on the lesser charge only.

4.—Food and Drugs—*Food Hygiene Regulations*, 1955—*Smoking in a shop where open food is displayed.*

Regulation 9 of the Food Hygiene Regulations, 1955, provides that a person who engages in the handling of food shall, while so engaged (*inter alia*)—"(*e*) refrain from the use of tobacco (including snuff) while he is handling any open food or is in any food room in which there is open food."

The case has arisen where a grocer's assistant was discovered to be smoking a cigarette in a shop where open food was displayed for sale, although at the time he was smoking he was not actually handling any open food. The point has been taken that the grocer's assistant is not guilty of an offence against the regulation because, although he is a person who engages in the handling of food within the meaning of reg. 2 (2) of the above Regulations, he was not "so engaged," *i.e.*, was not engaged in handling food at the time he was smoking. It seems to me that the expression "a person who engages in the handling of food" which is defined in reg. 2 (2) describes the occupation of the person whose operations are controlled by the regulation, so that the words "while so engaged" mean while engaged in the particular occupation, *i.e.*, in this case, that of grocer's assistant. In the circumstances, therefore, it appears that the grocer's assistant, who is a person who engages in the handling of food was, while engaged in his occupation as grocer's assistant, smoking a cigarette in a food room in which there was open food and is thereby guilty of an offence, notwithstanding the fact that at the time he was smoking, he was not actually handling open food.

I shall be glad to know whether you agree with my interpretation and whether you have any comments.

HOLKA.

Answer.

This is a difficult point, but, on the whole, we favour our correspondent's construction of the words "while so engaged." To do otherwise would mean that no one could ever be successfully prosecuted under the second part of reg. 9 (*e*) of the Regulations. If the words "or is in any food room in which there is open food" had not been there, the argument that "so engaged" means "engaged in handling food" would be stronger. As it is, we think the expression "while so engaged" must mean while carrying out his occupation, whether actually handling food or not at the time.

5.—Husband and Wife—*Summons for desertion—Time limit—Date on summons.*

A married woman wishes to apply to the magistrates' court for an order of maintenance in respect of herself and child, against her husband on the ground of desertion. She also wishes to apply for the custody of the child of the marriage. The desertion took place in 1955. Section 8 of the Summary Jurisdiction (Married Women) Act, 1895, provides that all applications under the Act should be made in accordance with the Magistrates' Courts Act, 1952. Section 104 of the Magistrates' Courts Act, 1952, states that except as otherwise expressly provided by any enactment the magistrates' court cannot hear a complaint unless the complaint was made within six months from the time when the matter of complaint arose. According to the notes on p. 1172 of *Stone*, 1957 edn., desertion is described as a continuing offence to which the six months' limit will not apply. In making the complaint will the date of the desertion have to be the

actual date in 1955, or will it have to be a date within the six months preceding the date of the making of the complaint?

FALTER.

Answer.

The complaint should recite the date on which the desertion is alleged, in the same way as the order should recite the date from which the desertion was found proved.

6.—Justices' Clerks—*Fees—Summary trial and subsequent committal to prison—Liability of prosecutor to pay fees.*

I shall be glad to have your opinion on the following point concerning justices' clerks' fees payable in summary cases.

The auditor of my fines and fees accounts contends that when a person is committed to prison for an offence or where a person is committed to prison for default in payment of a fine a further fee of 2*s.* is payable by the prosecutor (usually the police) for preparation of the warrant of commitment. He further contends that the 4*s.* clerk's fee in such cases is also payable by the prosecutor.

Prior to April, 1953, when the accounts were audited by the internal audit staff of the county council, a debit of the fine or court fee was raised in the fines and fees account book and when the defendant was committed to prison a corresponding entry was made in the fines and fees book in the column headed "Lost by committal, remitted, etc.," which was an end of the matter. Neither the 4*s.* or 2*s.* fees mentioned were charged to or recovered from the prosecutor.

I am of opinion that when a defaulter is committed to prison the fine (which would include the 4*s.* fee payable to the clerk) or any balance remaining unpaid is wiped out and that the liability to pay the 4*s.* clerk's fee has ceased.

Are the contentions of the auditor correct? MIDAS.

Answer.

The generally accepted view is that a justices' clerk is not bound to issue any process or document for the issue of which a fee is prescribed unless that fee has first been paid. Fees are payable, therefore, in the first instance by the informant or person on whose application the document is issued. The prosecutor is liable to pay the 4*s.* fee up to and including conviction or dismissal and, as the person instituting the proceedings leading to its issue, the 2*s.* fee for the commitment warrant. The auditor's contention is correct, and unless the fees paid can be recovered from a fine, in pursuance of s. 114 (1) (*c*) of the Magistrates' Courts Act, 1952, the prosecutor can be freed from his obligation to pay them only by their being remitted under s. 113 of that Act if the court finds that there is reasonable cause for so doing or if any fine imposed on the defendant does not exceed 5*s.*

7.—Licensing—*Mortgagee of licensed premises—Obligation of clerk to licensing justices to enter name in register of licences.*

The new owner-occupier of licensed premises is entitled to have his name entered in the register of licenses maintained by the clerk to the licensing justices. To enable him to purchase the premises he has given a mortgage to his bankers. His bankers now request that their interest be noted on the register. Section 41 of the Licensing Act, 1953, subs. 1 and 2 appear to authorize a note on the register of the name of a mortgagee in possession and of a person who has an estate or interest prior or paramount to that of the occupier.

It is clear that the bank is not a mortgagee in possession and the bank's legal estate does not appear to be prior to that of the freeholder who is the occupant.

Should the clerk to the licensing justices enter the name of the bank on the register? OCOL.

Answer.

In our opinion, the clerk to the licensing justices is required by s. 41 (2) of the Licensing Act, 1953, to enter the name of the mortgagee of licensed premises in the register of licences, on the application of that mortgagee and on his paying a fee of one shilling: this as a person possessing an estate or interest in the premises paramount to that of the immediate occupier.

8.—Husband and Wife—*Husband living in shed at bottom of garden—Enforcement of order.*

A wife obtains an order under the Married Women (Separation and Maintenance) Acts for maintenance for herself and one child on the grounds of her husband's desertion and neglect to maintain. There is no payment through the court, only a small amount paid direct. Cohabitation is resumed within three months of the order. At the end of August, 1956, the husband removes to a shed at the bottom of the garden, gets his own meals, sleeps in the shed (200 *ft.* away from house which is being bought on mortgage) but sometimes calls at the house for a cup of tea and to talk to the children. The practice has continued up to date. There has been no payment to the wife for the past 10 weeks.

The wife has now issued a complaint alleging

(*a*) desertion as at the end of August, 1956, and

(*b*) neglect to maintain on August 2, 1957, and days prior thereto.

Should she be successful on either or both of (*a*)/(*b*) could she enforce the order, should the husband continue to reside in the shed which is at the bottom of the garden of the matrimonial home.

As far as the order of May 18, 1956, is concerned, I am not able to ascertain the exact date on which the husband removed to the shed at the bottom of the garden. GLIMSO.

Answer.

This sort of case depends entirely on the particular facts. In our opinion, we would say that there are two separate households here, and the wife, if she were successful in obtaining an order on the grounds of her husband's desertion or neglect to maintain, could enforce the order. *See Baker* v. *Baker* [1952] 2 All E.R. 248; 116 J.P. 447.

9.—Magistrates—*Practice and procedure—Police officer acting as prosecutor and also giving evidence.*

A police officer prosecutes in a case of larceny and assault on another police officer. The police officer was present during the alleged assault. The evidence of the police constable is challenged, as to both the larceny and the assault and then the superior officer, who is prosecuting in the case, comes forward to give evidence. It is appreciated that there may be nothing in law against this procedure but it is submitted that it is highly undesirable, as the writer feels that whether the advocate be for the prosecution or the defence, he is there to present the case and not to involve his emotions, or involve himself in any way by giving evidence.

The writer believes that the Lord Chief Justice has remarked on this at some time but is unable to turn up the reference.

ITAL.

Answer.

The police officer can act as prosecutor only if he is the informant in the case. If, as such, he is also a material witness, there can be no objection to his giving evidence in the case. As a question of practice, if it is known that the evidence is likely to be challenged and he and other witnesses corroborate one another, it is probably better for him to give evidence before he calls his witnesses so that it cannot be said that he has the advantage of hearing them cross-examined before he himself gives evidence.

We have not traced any observations by the Lord Chief Justice on this matter.

10.—Private Street Works Act, 1892—*Apportioned sum payable by instalments—Calculation and recovery.*

The county council make up a private street under the Private Street Works Act, 1892, and declare that A, a frontager, shall pay the amount of his final apportionment by instalments over a period of 10 years. It is stated in *Croasdell on Private Street Works* (1947 edn.) that the order must be for payment by annual instalments.

(i) A wishes to instruct his bankers to pay a specified sum annually for 10 years calculated on the annuity principal, whereby during the first years the amount attributable to interest will be greater than in the last years. Is it in order to adopt this procedure, or must the annual instalments be equal, so that the interest diminishes each year and is calculated on the balance outstanding?

(ii) The county council find it convenient to issue demands every three months for payment of one quarter of the annual instalment of principal and interest. Is this legally in order? If A fails to pay one such quarterly instalment can proceedings to recover it be taken immediately, or must action be deferred until the whole of one year's instalment is in arrear?

P. X. JOHNIAN.

Answer.

(i) Instalments may be made payable in equal sums to cover the principal sum and interest.

(ii) The demand may be so issued for the convenience of both parties, but recovery proceedings are not possible until the annual instalment is unpaid.

11.—Road Traffic Act, 1930, s. 28—*Taking and driving away—Venue.*

With reference to the query raised in P.P. 8 at 119 J.P.N. 79, relative to the venue in cases under s. 28 of the Road Traffic Act, 1930, in your answer you appear to regard the offence as a summary offence. Could it not be argued that in view of the decision in *Hastings and*

Folkestone Glassworks Ltd. v. *Kalson* (1948) 112 J.P. 242, that offences under s. 28 of the Road Traffic Act, 1930, are indictable offences and as such could be dealt with either at the place of " taking " or where apprehended ?

Reference has been made to the article appearing at 112 J.P.N. 293 (which presumably has since been affected by the Magistrates' Courts Act, 1952), and subsequently to your answer to P.P. 1 at 121 J.P.N. 236, which infers that such offences may be regarded as indictable offences for the purposes of powers of arrest.

I have read the definition of indictable offences contained in the Magistrates' Courts Act, 1952, s. 125 (*b*) read in conjunction with s. 25 of the Act, but in my opinion it is not quite clear whether or not it invalidates the above argument, and I should be glad of your further opinion on the point of venue. Y. NEMO.

Answer.

The decision of the Divisional Court in *Hastings and Folkestone Glassworks* v. *Kalson* (*supra*) was reversed by the Court of Appeal (113 J.P. 31). Presumably it is the decision of the Court of Appeal that our correspondent has in mind. Since that case was decided, and since the article on p. 293 of vol. 113 (not 112) was written, the matter has been clarified by the Magistrates' Courts Act, 1952.

Taking and driving away is " both an indictable offence and a summary offence," within the meaning of that expression in s. 18 of that Act and within the definitions in s. 125. It may therefore be dealt with either at the place of " taking," or where the defendant was apprehended.

For the purposes of arrest it may be regarded as an indictable offence, but in any event s. 28 (3) of the Road Traffic Act, 1930, gives the police power to arrest without a warrant. If, however, the police arrest the defendant when he is not actually driving the car, and outside the county or place in which he did drive it, and bring him before the court for the place where he was apprehended, that court would not be able to deal with any purely summary offence committed at the same time as the taking and driving away (*e.g.*, no insurance, or no driving licence). For that reason, among others, it is advisable to bring all taking and driving away charges before the court for the place where the offence was committed.

The question as to whether taking and driving away is a summary or an indictable offence did not arise in the question at 119 J.P.N. 79. The authority to issue process under s. 1 does not depend on the nature of the offence.

12.—Road Traffic Acts—1. *Without due care and attention—Must prosecution prove both elements ?* 2. *Without reasonable consideration—Elements of this offence.*

I should appreciate your comments on two points which have been canvassed in this district lately, both arising under s. 12 of the Road Traffic Act, 1930.

1. On a charge of driving without due care and attention it has been suggested that the prosecution must prove beyond reasonable doubt that the defendant has not only driven without due care but also without due attention, and that both ingredients are necessary and that both must be proved, the statute being a penal one. Against this it has been argued that it is the defendant's duty to drive with due care and attention and that he does not do that if he fails to show either one or the other. Compare the positive obligation of having both a red light and a white light on a bicycle after lighting up time. Section 12 does not in terms impose a positive obligation and it would seem that on the first mentioned view of the meaning of the section magistrates should be able when analysing the evidence to say what evidence proves want of care and what evidence, possibly the same evidence, also shows want of attention.

2. The point here is under the second limb of the same section: driving without reasonable consideration. Must the person for whom want of consideration is shown be on the road (as defined) at the time of the alleged offence? *e.g.*, can want of due consideration be shown to an empty car, the driver of which is in a house fronting on the road ? Is it a correct view of the meaning of this limb that it makes punishable bad road manners such as driving through a puddle of water and splashing someone on the road ? Would splashing an unattended bicycle standing by the side of the road come within it as well as splashing the owner of the bicycle if he were actually riding it or standing near it? IROS.

Answer.

1. In *McCrone* v. *Riding* [1938] 1 All E.R. 157; 102 J.P. 109 Lord Hewart, L.C.J. referred to the use of both words and said of a driver " he must pay attention to the thing he is doing and perceiving that which he is doing or entering upon, he must do his best and he must show proper care in the doing of that thing upon which he is intent." It is clear, therefore, that there is a distinction to be drawn and we think that as the section penalizes only those persons who drive without due care *and* attention (not due care *or* attention) both elements must be proved by the prosecution. In practice, however, we think that there can be only a negligible proportion of cases in which the evidence will show lack of due care without showing also lack of attention.

2. We have no authority on the point but we think that the second part of the section is intended to deal only with those cases in which the person using the road, who is affected, is present upon it at the material time. We do not think that a casual driving through a puddle which happens to result in someone being splashed would normally constitute this offence. It is a penal section, and we think that for a prosecution of this kind to have a chance of succeeding the evidence would have to show, for example, that there was a large and obvious puddle, that a reasonable driver would realize that splashing must result from his driving through it and that nevertheless, although he might have slowed down or stopped, he deliberately drove on through the puddle with undiminished speed.

13.—Solicitors Act, 1932, s. 47—*Preparation of documents by local authority's staff.*

An opinion on the following questions is desired.

1. Whether a clerk of an urban district council who is not qualified, *i.e.*, is not a barrister or solicitor, can draw or prepare the following:

(*a*) agreement or lease not under seal ;

(*b*) lease which has to be under seal (*i.e.*, over three years);

(*c*) conveyance of land to council.

2. In connexion with the above, if not legal for him to do this, to what extent can be partake in the transaction, *i.e.*, abstract contract for sale, etc., draft conveyance, and also to what extent can he partake in similar transactions, *e.g.*, sale of council houses, loans under Small Dwellings Acquisition Acts.

3. I have heard it suggested that the clerk can do almost all kinds of legal work, except mortgages, provided the council do not charge the party with which the council is dealing any costs for doing the legal work. Is this the deciding factor, or is it that the clerk of the council, and his deputy who does most of the legal work concerned, are not considered to be working " for or in expectation of any fee, gain or reward." ABILA.

Answer.

1. No: *see Beeston and Stapleford U.D.C.* v. *Smith* [1949] 1 All E.R. 394; 113 J.P. 160; *Kushner* v. *Law Society* [1952] 1 All E.R. 404 ; 116 J.P. 132.

2. The statutory prohibition (reproduced in s. 20 of the Solicitors Act, 1957) is upon an unqualified person who " draws or prepares any instrument relating to real or personal estate." It might in a particular case be a question of fact, whether the local authority's staff had infringed the section by getting papers ready for the solicitor to work on, but the language of the query suggests that they may be running risks.

3. In the case cited the council itself did receive certain fees for the deeds from the other party. It is a defence if the council (and the clerk) can prove that the act was not done for or in expectation of any gain, fee, or reward by either of them, but the burden of proof is on them. The courts might in our opinion hold that the council expected gain (from the transaction as a whole) even though they received no fee or reward for the actual preparation of the documents. We cannot see that any of the council's proper purposes are served by the courses indicated in this part of the query.

14.—Town and Country Planning—*More than one non-compliance with enforcement notice alleged at same time.*

The planning authority have laid two informations under s. 24 (3) of the Town and Country Planning Act, 1947, alleging that during the same period the defendant used land for parking vehicles and used land for the exhibition of signs thereon, each use being in contravention of an enforcement notice served upon him. In view of the wording of s. 24 (3) " Where, by virtue of an enforcement notice, ... any person ... uses the land ... in contravention of the notice, he shall be guilty of an offence ... " is there any objection to the imposition of two penalties for two matters which have arisen out of the contravention of one enforcement notice over the same period of time ?

There is only one enforcement notice. COFOR.

Answer.

Looking to the structure of s. 24 (3), of which the vital words are omitted in the query, we think that a use of land can be required to be discontinued, and then another use of that land can be required to to be discontinued, by the same piece of paper. If this is done, a person who uses the land in contravention of either of the requirements to discontinue is, in our opinion, using it in contravention of the notice. But we should not regard it as safe to proceed upon two informations arising from the same notice, if the notice did no more than require discontinuance of contravening use, not specifying the separate uses.

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